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Property Rights Of Business Entities In Relation To The Land Plot And Its Civil Protection

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ABSTRACT

The article discusses the civil law issues of establishing the property rights to land plots. The civil law issues of improving the protection of these rights, ensuring the inviolability of private ownership of land plots are also studied in this article, basing on the experience of foreign countries, theoretical and practical recommendations are given for improving the legislation on this problem.

KEYWORDS

A Land Plot, Property Right To Land Plots, Seizure Of Land Plots For State And Public Needs On The Terms Of Compensation, Ensuring The Inviolability Of Private Property, Protection Of Rights And The Legitimate Interests Of The Owners.

INTRODUCTION

Land is a fundamental resource of the nation state. Without land, without territory, there can be no nation state¹. Housing, agriculture, natural resource use, and national security concerns are all based upon land management and use².

In this sense, in the implementation of political, economic and social reforms by the state land property relations play a significant role. In the Article 55 of the Constitution of the Republic of Uzbekistan is mentioned that the land, its minerals, fauna and flora, as well as other

¹R.Jennings and A. Watts, eds., Oppenheim's International Law (London, 1992) (hereafter, "Oppenheim"), at 121.

²S.Hodgson, C.Cullinan, K.Campbell. Land Ownership and Foreigners – A Comparative Analysis of Regulatory Approaches. FAO Legal Papers Online, December 1999, at 6.

natural resources shall constitute the national wealth, and shall be rationally used and protected by the state.

According to the Article 83 of the Civil Code of the Republic of Uzbekistan, property as an object of civil rights is divided into immovables and movables, the plots of which are included in the list of types of immovable property.

It should be noted that the property right to land plots in relation to other objects of property rights has been disputed at different times, and dissimilar views have been formed on it.

In this case, the property right to land plots means to whom the land belongs and the powers of the owners in relation to natural resources. Property rights to the land are seen in the processes of ownership, use and disposal of land. In general sense, the land is a state property in accordance with the laws of the Republic of Uzbekistan. Particularly, the Article 214 of the Civil Code of the Republic of Uzbekistan stipulates that the land is the property of the Republic.

At the same time, the legal basis of property right to land is defined in a number of laws. The Article 188 of the Civil Code stipulates that “property rights of citizens and legal entities to land plots arise in the cases, in the manner and under the conditions provided by law,” and these issues are directly provided by the land legislation. So, the land can be named as immovable property in one hand and an integral part of the natural environment that surrounds us in another. Hence, the land has

both environmental and economic characteristics. Therefore, the land remains both a natural object and a property at the same time, and it is indivisible from the environment.

On this basis, since the land is a national wealth – state property, it follows the conclusion that in Uzbekistan it is not possible to privatize the land as a part of nature, but only those lands – land plots that are not intended for agriculture purposes.

According to the legislation of Uzbekistan, a land plot is a part of the land fund that is not allocated or intended for agricultural purposes, has a specified boundary, area, location, legal regime and other features reflected in the state land cadastre³.

Obviously, the basis of market economy is private property. Without private ownership of the land, market economy would not be complete.

In this regard, in present times the views on the recognition of property rights to the land in legal theory and law enforcement practice are developing and changing totally in line with the advance of market economy.

Economically developed states’ experience shows that market relations evolve only when the producer, particularly the farmer, is free in his labor activity and is the real owner of the land and the product, which are the most important resources of production in agriculture.

³ Land Code of the Republic of Uzbekistan // Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1998 y., 5-6, Article 82 of the law of the Republic of Uzbekistan "on privatization of land plots not

intended for agriculture" // national database of legislative acts, 13.08.2019 y., 03/19/552/3541-number.

The analysis of the experience of the land privatization during the transition to market relations in countries that have lived through the similar historical processes as Uzbekistan approves that this process was carried out in two major ways.

The first type of land privatization is the restitution method. Restitution⁴ (from Latin, restitutio - restoration) is the return of property to its previous owners on the basis of documents, restoring the right of ownership. This type of privatization has been introduced mostly in Eastern European and Baltic countries and it is still in practice.

The second type of land privatization states that a free share of the land was provided to the population who are directly occupied in agriculture. This type of privatization was carried out in the Russian Federation⁵.

Reforms in the field of land relations in foreign countries have led to significant changes in the form of ownership of land and in the state's monopoly on land, consequently expanding the range of users has brought positive economic effects.

In particular, in Bulgaria in 1992 it was adopted the Law "On Land", which specifies the formation of a free land market in the country. Moreover, in Romania under the "Land Law" of 1991, farmers' land became their private

properties. The principle of free choice of land, adopted in the XIX century in Australia, still applies. In addition to the sale of land plots, the lease of land is also common⁶.

And in Uzbekistan it is notable that a peculiar method was selected in this process, taking into consideration the socio-economic situation and the national mentality of the people.

Several regulations intended for the gradual implementation of reforms have been adopted in this area. Initially, by the Decree⁷ of the President of the Republic of Uzbekistan No. PD-745 dated 21 January 1994 and by the Decree⁸ No. PD-1009 dated 24 November 1994, the land plots, where the objects of commercial and service spheres are located, are mentioned to be sold individuals and legal entities, including foreign persons on the basis of selection as a private property and in order to build individual private house by the auction⁹.

According to the Decree¹⁰ of the President of the Republic of Uzbekistan dated 24 July 2006 No. PD-3780, legal entities-residents of the Republic of Uzbekistan were entitled to privatize buildings and structures possessed by them, land plots on which the objects of infrastructure production are located, as well as land plots adjacent to these objects,

⁴ Land Code of the Republic of Uzbekistan // Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1998 y., 5-6, Article 82 of the law of the Republic of Uzbekistan "on privatization of land plots not intended for agriculture" // national database of legislative acts, 13.08.2019 y., 03/19/552/3541-number.

⁵Xolmo'minov O. (2020) "Civil law issues of land ownership formation," Review of law sciences: Vol. 4 : Iss. 1, Article 20.

⁶ Kuchkinov K.A. Legal regulation of land use contracts: juridical. science. the dis. ... - Tashkent: 2012. - 17b.

⁷ <https://lex.uz/docs/195887>

⁸<https://lex.uz/docs/197514> (2021 year 30 April lost its power)

⁹ Azizov Kh. Objects of private property rights of citizens. Dissertation. 1994. - 162 p.

¹⁰ "Collection of legislative acts of the Republic of Uzbekistan", Article 288, number 30, 2006 year.

additionally applicable technology processes, taking into account the norms and rules of urban construction¹¹.

The Decree of the President of the Republic of Uzbekistan No. PD-5623 of 10 January 2019, establishes cases with the right to privatize land plots of individuals and legal entities in order to introduce modern market conditions into the circulation and use of land plots, moreover the privatized land plots are considered as private properties (objects of civil relations) and they are inviolable regarding to the protection by the state in accordance with the law.

The Law of the Republic of Uzbekistan “On the privatization of land plots which are not intended for agriculture”, that entered into force on 1 March 2020, having a great importance for determining the legal basis for the privatization of land plots not intended for agriculture, defined the basic rules and procedures for the privatization of land plots.

O.Xolmo'minov believes that this law, adopted as a legal experiment, is to a certain extent the first stage of the introduction of private ownership in relation to the land. In the first order, among of other cases of land privatization, a private individual has a right to privatize the land, where his enterprise is located. Consequently, there is a principle of unity of land plots and objects located in them¹².

The introduction of a transparent, market-based and equal procedure for allotment of

land plots, ensuring stability in property and legal relations in the field of land use, land protection, guaranteeing the property rights of landowners, as well as their introduction into free circulation as an object of civil law relations by determining the economic value of land, are considered as the basic principles of the market economy (the Degree of the President No. PD-6243).

It should be noted that the President of the Republic of Uzbekistan Shavkat Mirziyoyev carried out important reforms in this area. In particular, the Decree¹³ of the President of the Republic of Uzbekistan No. PD-6243 of June 8, 2021 “On measures to ensure equality and transparency in land relations, reliable protection of land rights and their conversion into market assets” has brought the reforms, carried out on the establishment of property rights in relation to the land plot and its civil-law protection, to a new level.

By this Decree, the types of rights to the land were enhanced, the procedure for allocating land with rights of inherited lifelong possession, of permanent possession, of a temporary access to the land were completely abolished, moreover land plots were determined to be allocated on the basis of the right for property and lease by the private sector and for permanent use by state organizations. The sale of lands as a private property, which are not intended for agriculture, to citizens and legal entities of Uzbekistan as well as the sale of rental rights of lands that cannot be privatized, to foreign

¹¹Rahmankulov H., Azizov Kh., Civil-legal guarantees of the right to private property of business entities. Monographs. T.: 2013. - 190 p.

¹²Xolmo'minov O. (2020) "Civil law issues of land ownership formation," Review of law sciences: Vol.

4 : Iss. 1, Article 20.

¹³National database of legislative acts, 09.06.2021 y., 06/21/6243/0540-number.

persons, and the privatization of lands, where buildings and structures of individuals and legal entities are located, at the expense of the material recourses, are determined.

In order to introduce the provisions of the Decree into the practice, on August 16, 2021, the Law “On amendments and additions to certain legislative acts of the Republic of Uzbekistan regarding to the separation and use of land plots, as well as land accounting and improvement of the system of State Land Registry” was adopted¹⁴.

Concerning to this reform, the President of the Republic of Uzbekistan Shavkat Mirziyoyev noted: “in open dialogue with entrepreneurs of our country, a solid legal ground was created for the introduction of lands into economic turnover, their purchase and sale and their conversion into a pledge object. The market value of the land plots appears as a result of its privatization. A person, who has a land, becomes a real proprietor and capital owner”¹⁵.

The most important thing is what changes can be occurred in the life of an ordinary citizen. First of all, his private property will have powerful protection. According to the request of the legislation, private lands can be withdrawn only for the needs of the state and the public with the consent of the owner. If the land is privatized, then it will no longer be possible to take the land away for the needs of

the state and the public solely providing the compensation for the building and property. In that case, the particular land should be sold by the owner or other way of agreement should be reached with the owner. If it is not agreed, then the land cannot be withdrawn. So, another legal opportunity was created for citizens to protect their properties.

Private property is an integral part of the economic basis of society and driving force in the transition to market relations, therefore, its development and stimulation, as well as all-round protection are fixed at the highest legislative level¹⁶.

In concordance with the foregoing the issue of civil legal regulation of land ownership in Uzbekistan has its own peculiarity of development.

At the same time, the legislation on property rights has not been sufficiently improved¹⁷. It is necessary to consistently implement reforms aimed at further enhancement of the protection of property rights of business entities, strengthening the legal framework for the protection of property rights and its civil law basis in relation to the land plot.

Firstly, the Land Code of the Republic of Uzbekistan, which is in force today, was adopted in 1998 and it is not fully responsive to the legal regulation of complex and rapid economic and social relations at the current

¹⁴National database of legislative acts, 17.08.2021 y., 03/21/708/0799-number.

¹⁵ Speech by the President of the Republic of Uzbekistan Shavkat Mirziyoyev at the meeting with entrepreneurs of our country in the form of open communication "Creation of all conditions for rapid and wider development of entrepreneurship is our most important task" // <https://president.uz/uz/lists/view/4551>

¹⁶ Azizov Kh. Judicial protection of private property and entrepreneurship. Bulletin of the Supreme Economic Court. 7/2010, article 12.

¹⁷Podshivalov T. Models of Actio Negatoria in the Law of Russia and European Countries. Russian Law Journal. 2019;7(2):128-164. (In Russ.) <https://doi.org/10.17589/2309-8678-2019-7-2-128-164>

stage of development of society. At the moment, many relations in this field are not regulated by this Code, but by subordinate legal acts.

Therefore, the unification of normative legal acts in this field by drafting a new edition of the Land Code is necessary and relevant to cover the full regulation of legal relations in the land sector and promote the economic development of the state.

Secondly, the seizure of land plots for the needs of the state and the public, as well as the destruction of objects located on the seized land plots, are a pressing problem in many states, and the inadequacy of legal regulation of these issues to the necessary extent, in most cases, causes discontent among the population.

It should be noted that the issues related to the seizure of land plots for the needs of the state and the public are regulated mainly by the present day subordinated legislation. Therefore, it is desirable to define at the law level the issues of withdraw of land plots based on compensation for the needs of the state and the public, and also to develop and implement the law "On the acquisition of land plots for public needs (expropriation)", which mentions the fair compensation for the acquisition of the land plots of individuals and legal entities for public needs (expropriation).

Thirdly, in order to determine the cadastral value of objects of immovable properties, including land plots, based on their market prices, to regulate the relations that arise when conducting state cadastral valuation of immovable properties, it is desirable to

develop and adopt the draft law "On the state cadastral valuation of immovable properties".

Fourth, in order to provide constitutional guarantees for the inviolability and protection of private property, it is proposed to cancel the procedure for imposing additional obligations on the owner on the basis of non-use or non-rational use of private property or the establishment of taxes and other fees in an overstated amount (rate), to establish in our legislation norms based on the best foreign experience in relation to the right to self-protection of the owner's property, where the limits of necessary protection (self-help) are not exceeded.

In conclusion, socio-economic reforms carried out in our country in these conditions¹⁸, ensuring the inviolability of private property, strengthening the right of property owners, including entrepreneurs, in relation to the land plot and improving the legal framework for its civil-legal protection, are especially important for the economic development of the country and the prosperity of the population.

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¹⁸Over the past five years, about 2 thousand laws, decrees and decisions have been adopted aimed at

developing this sector // <https://president.uz/uz/lists/view/4550>

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